IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUAN LABOY ALMODOVAR, *Plaintiff,* v. OFC. MATTHEW BLAKE, OFC. DONALD MORANT, OFC. STANLEY ROACHE, OFC. KURTIS MILLER, and OFC. GINDER, in their individual capacities, *Defendants.*	CIVIL ACTION NO. 08-2163 JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT

Plaintiff Juan Laboy Almodovar, by and through his undersigned counsel, files this Third Amended Complaint against Defendants Ofc. Matthew Blake, Ofc. Donald Morant, Ofc. Stanley Roache, Ofc. Kurtis Miller, and Ofc. Thomas Ginder, in their individual capacities, for violation of Plaintiff's civil rights, entitling Plaintiff to recovery under 42 U.S.C. § 1983, and for assault, battery, and intentional infliction of emotional distress.

I. JURISDICTION

1. This action is brought pursuant to 28 U.S.C. §§ 1331, 1343, 1367(a), and the aforementioned statutory provision.

2. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims set forth below occurred in this District.

II. PARTIES

3. Plaintiff Juan Laboy Almodovar ("Plaintiff") is a natural person residing at 3495 Horizon Drive, Lancaster, PA 17601, and was a citizen of the Commonwealth of Pennsylvania at all times relevant to this action.

4. Defendant Ofc. Matthew Blake ("Blake") is a natural person and, upon information and belief, is a citizen of the Commonwealth of Pennsylvania and maintained a residence in Pennsylvania at all times relevant to this action. Blake was a duly-appointed police officer in the Lancaster City Police Department at all times relevant to this action.

5. Defendant Ofc. Donald Morant ("Morant") is a natural person and, upon information and belief, is a citizen of the Commonwealth of Pennsylvania and maintained a residence in Pennsylvania at all times relevant to this action. Morant was a duly-appointed police officer in the Lancaster City Police Department at all times relevant to this action.

6. Defendant Ofc. Stanley Roache ("Roache") is a natural person and, upon information and belief, is a citizen of the Commonwealth of Pennsylvania and maintained a residence in Pennsylvania at all times relevant to this action. Roache was a duly-appointed police officer in the Lancaster City Police Department at all times relevant to this action.

7. Defendant Ofc. Kurtis Miller ("Miller") is a natural person and, upon information and belief, is a citizen of the Commonwealth of Pennsylvania and maintained a residence in Pennsylvania at all times relevant to this action. Miller was a duly-appointed police officer in the Lancaster City Police Department at all times relevant to this action.

8. Defendant Ofc. Thomas Ginder ("Ginder") is a natural person and, upon information and belief, is a citizen of the Commonwealth of Pennsylvania and maintained a

residence in Pennsylvania at all times relevant to this action. Ginder was a duly-appointed police officer in the Lancaster City Police Department at all times relevant to this action.

9. Plaintiff sues all public employees in their individual capacities.

10. At all times relevant to this action, Defendants Blake, Morant, Roache, Miller, and Ginder acted toward Plaintiff under color of the statutes, ordinances, customs, and usage of the Commonwealth of Pennsylvania, City of Lancaster, and the Lancaster City Police Department.

III. FACTS

11. On June 9, 2006, at approximately 8:50 p.m., Plaintiff was the backseat passenger in a vehicle stopped on the 400 block of West King Street in Lancaster City by the individual Defendants, all officers employed by the City of Lancaster working in the Lancaster City Police Department.

12. The vehicle was driven by Manuel Gonzalez. Carlos Almodovar, Plaintiff's brother, was the front-seat passenger.

13. Multiple officers, including the individual Defendants, converged on the vehicle with their weapons drawn, suspecting that Carlos Almodovar had recently sold narcotics to an undercover Lancaster City police officer.

14. Upon information and belief, all individual Defendants named herein participated in and/or witnessed the forceful removal of Manuel Gonzalez and Carlos Almodovar from the vehicle.

15. After pulling Carlos Almodovar from the vehicle's front passenger seat, Defendant Roache looked at the other officers at the scene and said "When he [Plaintiff] gets out, fuck him up."

16. Defendant Roache opened the rear passenger-side door in an effort to forcibly remove Plaintiff.

17. Plaintiff told Defendant Roache that he would exit peacefully.

18. Defendant Roache persisted in attempting to forcibly remove Plaintiff from the backseat of the vehicle, causing Plaintiff to hold on to the front-seat headrest and to fear for his life and well-being.

19. At no time did Plaintiff strike, attempt to strike, or intend to strike the Defendant police officers or any other police officer. At no time did Plaintiff resist arrest or threaten in any way to resist arrest.

20. Upon information and belief, Defendant Morant opened the rear door on the driver's side, instructed Defendant Roache to back away, and administered a burst of oleoresion capsicum ("O.C") spray directly into Plaintiff's face.

21. Immediately thereafter, Defendant Morant administered a second burst of O.C. spray directly into Plaintiff's face without waiting for the first to take effect.

22. Despite having just administered two bursts of O.C. spray, upon information and belief, officers unknown to Plaintiff at this time dragged Plaintiff from the vehicle's backseat via the rear driver's side door and threw him, face down, onto the street and into the travel lane on West King Street in Lancaster City.

23. Upon information and belief, officers unknown to Plaintiff at this time began, without provocation, assaulting Plaintiff while he was face down in the street, kicking Plaintiff and pushing his face into the street.

24. Defendant Blake, among other officers, placed Plaintiff in handcuffs, whereupon Defendant Blake, without provocation, kicked Plaintiff in Plaintiff's ribs, punched Plaintiff in Plaintiff's neck, and, again without provocation, administered a third burst of O.C. spray to Plaintiff's face from approximately one foot away. At no time during the course of this incident did Plaintiff either resist in any way or behave aggressively.

25. Upon information and belief, all individual Defendants named herein participated in and/or witnessed the forceful removal of Plaintiff from the vehicle and the subsequent mistreatment of the Plaintiff.

26. The actions of the Defendants were undertaken in a menacing and arbitrary manner, designed to cause Plaintiff pain, fear, distress, and embarrassment.

27. Plaintiff was removed from the travel lane on West King Street, escorted to a police cruiser, and transported to the Lancaster City police station.

28. While at the police station, Plaintiff suffered a severe reaction from the three separate bursts of O.C. spray that he had withstood.

29. Plaintiff was blinded in both eyes from the chemicals and his symptoms included intense pain, watery eyes, burning in the eyes, and difficulty breathing. Plaintiff, while still in the custody of the Lancaster City Police Department, was conveyed later that evening to Lancaster General Hospital for treatment for the chemical exposure.

30. Defendant Ginder accompanied Plaintiff to Lancaster General Hospital.

31. While Plaintiff was receiving treatment for chemical exposure at the hospital, solution washed into Plaintiff's mouth, forcing Plaintiff to gag and reflexively attempt to purge the solution from his mouth.

32. Falsely claiming that Plaintiff was spitting, Defendant Ginder, on two occasions, forcibly covered Plaintiff's mouth with his hand. These actions interfered with Plaintiff's treatment and deprived Plaintiff of oxygen and the ability to breathe.

33. Defendant Ginder applied such force to Plaintiff despite the fact that Plaintiff's extremities were restrained and he was not a threat to Defendant Ginder or to any medical personnel that were administering treatment to Plaintiff for the chemical exposure from which he suffered.

34. When Defendant Ginder applied such force, Plaintiff had the sensation that he was drowning, and consequently was terrorized and feared for his life.

35. When Plaintiff asked Defendant Ginder why Defendant Ginder was "trying to kill" him, Defendant Ginder had no response.

36. Plaintiff returned to Lancaster General Hospital on June 10, 2006, the day after he was arrested by Defendants, and was diagnosed as having a cervical strain, head contusion, and lumbar strain caused by Defendants' actions during the course of Plaintiff's arrest on June 9, 2006.

37. Plaintiff also filed a Civilian Complaint with the City of Lancaster because of the unwarranted abuse he had endured at the Defendants' hands.

38. The foregoing conduct of the Defendants, acting under color of state law, was undertaken as part of an effort to unlawfully assault and otherwise deprive Plaintiff of his civil and constitutional rights, including Plaintiff's rights, privileges, and immunities under the Fourth and Fourteenth Amendments to the United States Constitution and the laws of the Commonwealth of Pennsylvania, entitling Plaintiff to relief pursuant to 42 U.S.C. § 1983 and the laws of Pennsylvania.

39. As a direct and proximate result of the Defendants' actions, Plaintiff has suffered and continues to suffer serious mental anguish, severe psychological and emotional distress, and pain and suffering, some or all of which may be permanent.

COUNT I – DEPRIVATION OF CIVIL RIGHTS

40. Plaintiff hereby incorporates by reference Paragraphs 1 through 39 as though fully set forth herein.

41. As a direct and proximate result of all Defendants' conduct, committed under color of state law, Plaintiff was deprived of his right to be free from unreasonable and excessive force in violation of his rights under the Fourth and Fourteenth Amendments of the Constitution of the United States, entitling Plaintiff to recovery pursuant to 42 U.S.C. § 1983.

42. As a direct and proximate result of the acts of all Defendants, Plaintiff sustained physical injuries, severe emotional harm and distress, loss of liberty, and financial losses, all to Plaintiff's detriment.

43. Defendants have by their wanton and malicious actions deprived Plaintiff of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution, entitling Plaintiff to recovery under 42 U.S.C. § 1983.

COUNT II – FAILURE TO INTERVENE TO PREVENT DEPRIVATION OF CIVIL RIGHTS

44. Plaintiff hereby incorporates by reference Paragraphs 1 through 43 as though fully set forth herein.

45. As a direct and proximate result of all individual Defendants' failure to intervene to prevent other individual Defendants' use of unreasonable and excessive force (including, but not limited to, the spraying, kicking, and punching pleaded above), under color of state law, Plaintiff was deprived of his right to be free from unreasonable and excessive force in violation of

his rights under the Fourth and Fourteenth Amendments of the Constitution of the United States, entitling Plaintiff to recovery pursuant to 42 U.S.C. § 1983.

46. As a direct and proximate result of the failure of Defendants Blake, Morant, Roache, and Miller to intervene, Plaintiff sustained physical injuries, severe emotional harm and distress, loss of liberty, and financial losses, all to Plaintiff's detriment.

47. All individual Defendants have by the above-described actions deprived Plaintiff of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution, entitling Plaintiff to recovery pursuant to 42 U.S.C. § 1983.

COUNT III – SUPPLEMENTAL STATE CLAIM FOR ASSAULT AND BATTERY

48. Plaintiff hereby incorporates by reference Paragraphs 1 through 47 as though fully set forth herein.

49. All individual Defendants intentionally caused Plaintiff reasonable apprehension of offensive and harmful bodily contact.

50. All individual Defendants intentionally caused offensive and harmful bodily contact with Plaintiff.

51. All individual Defendants' use of force was unnecessary, excessive, and without justification.

52. All individual Defendants acted in a malicious, wanton, reckless, willful and oppressive manner.

53. The acts and conduct of all individual Defendants constitute assault and battery under the laws of the Commonwealth of Pennsylvania, entitling Plaintiff to recovery, and this Court has supplemental jurisdiction to hear and adjudicate these claims.

COUNT IV – SUPPLEMENTAL STATE CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

54. Plaintiff hereby incorporates by reference Paragraphs 1 through 53 as though fully set forth herein.

55. In addition to the physical damages all individual Defendants inflicted upon Plaintiff, all individual Defendants caused Plaintiff severe anguish, distress, aggravation, and inconvenience.

56. As a direct and proximate result of all individual Defendants' malicious, wanton, willful, reckless, and oppressive conduct, Plaintiff suffered severe mental distress and anguish.

57. The extreme and outrageous acts and conduct of the individual Defendants constitute intentional infliction of emotional distress under the laws of the Commonwealth of Pennsylvania, entitling Plaintiff to recovery, and this Court has supplemental jurisdiction to hear and adjudicate this claim.

WHEREFORE, judgment is demanded in favor of Juan Laboy Almodovar and against Defendants for:

a) Compensatory damages;

b) Punitive damages for willful and malicious conduct;

c) Reasonable attorneys' fees and costs; and

d) Such other and further relief as this Court deems reasonable and just.

JURY DEMAND

58. Pursuant to FED. R. CIV. P. 38, Plaintiff demands a trial by jury as to each Defendant and as to each count.

BLANK ROME LLP

By: ________________________

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Dated: April 21, 2010

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Ryan P. Stewart, Esquire, hereby state that on this 21st day of April, 2010, a true and correct copy of the Plaintiff's Third Amended Complaint was served by United State Mail upon the following:

Robert G. Hanna, Jr., Esquire
225 Market Street, Suite 304
P.O. Box 1245
Harrisburg, PA 17108-1245

RYAN P. STEWART

Dated: April 21, 2010